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Supreme Court, U.S.
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No. 95-872

In The

Supreme Court of the United States

October Term, 1995

WAYNE TRAYWICK,

Petitioner,

v.

MEDICAL UNIVERSITY OF SOUTH CAROLINA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals properly exercised its discretion in concurring with the legal standard used by the District Court in awarding qualified immunity to the individual Respondents for acting as reasonable school officials would have acted under the circumstances in dismissing Petitioner from dental school.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents, the Medical University of South Carolina; Dr. Fitzhugh Hamrick; Dr. Richard DeChamplain; Dr. David A. Whittaker; Dr. Richard M. Dom; Dr. James D. Tietge; Dr. James B. Edwards; Dr. John Blackburn; Dr. Robert Holmes; Dr. Charles Hook; Dr. Donald Nelson; and Dr. Daniel Sneed, respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Fourth Circuit's Opinion in this case.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This action was filed *pro se* by Petitioner who sought sizable money damages and reinstatement into the Medical University of South Carolina College of Dental Medicine as a result of his dismissal by the school's Academic Performance Committee in December of 1993. The Petitioner brought this 42 U.S.C. § 1983 action mainly asserting constitutional due process violations against the Respondents. In addition, the Petitioner made various freedom of speech, equal protection, and pendent breach of contract claims.

B. OPINIONS BELOW

On February 21, 1995, United States Magistrate Judge Carr issued his Report and Recommendation in favor of granting Respondents' Motion for Summary Judgment and dismissing all individually named defendants on the

grounds of qualified immunity. The Report and Recommendation also advised dismissal of the claims against the Medical University of South Carolina for failure to state a cause of action and declined jurisdiction for the pendent state causes of action. *See* Petitioner's Appendix at 8a.

After consideration *de novo* of the multiple objections filed by the Petitioner, the United States District Court adopted the Magistrate's Report and Recommendation and granted Respondents' Motion for Summary Judgment on March 27, 1995. *See* Petitioner's Appendix at 6a. The Fourth Circuit affirmed the District Court's decision on September 21, 1995, finding no reversible error. *See* Petitioner's Appendix at 2a. Finally, on October 17, 1995, the Fourth Circuit denied Petitioner's plea for rehearing. *See* Petitioner's Appendix at 1a.

C. COUNTER-STATEMENT OF THE FACTS

The United States Magistrate Judge based his Report and Recommendation on the below-stated factual allegations that were not, and have never been, disputed.

The Petitioner was a first semester student at the College of Dental Medicine of the Medical University of South Carolina in the fall of 1993. At the mid-term point, he was advised that he was having difficulty in his courses on Dental Morphology and Pre-Clinical Occlusion. Subsequently in December 1993, the Petitioner was advised that he would not be receiving credit for the course in Dental Morphology. On December 21, 1993, the Dean of the College of Dental Medicine, Dr. Richard W. DeChamplain, sent the Petitioner a letter advising, "The Academic Performance Committee of the College of Dental Medicine met today to review the progress of each class. They recommended to me that you be dismissed

from the College of Dental Medicine." The Dean continued that the recommendation was based upon the student progress guidelines which included a consideration of personal characteristics which seem inappropriate for one seeking to become a dentist. Further, the committee noted the Petitioner's extreme difficulty in courses involving manual dexterity, such as Dental Morphology. Finally, upon review, the Dean advised the Petitioner that he accepted the recommendation of the committee and advised the Petitioner that he would be immediately dropped from the rolls of the College.

The Petitioner appealed this decision to the *ad hoc* committee of the University and a hearing was held on January 5, 1994. The Petitioner was present and represented by counsel. After private deliberations and interviewing the Dean of the College, the Committee found that the recommendation of the Academic Performance Committee was justified on the basis of the following:

1. On-going attitudinal and behavioral actions bringing into question the Petitioner's professional judgment;

2. Significant concerns expressed by several faculty about the Petitioner's lack of proficiency in manual skill areas critical to the profession of dentistry; and

3. Marginal academic performance to date, particularly in aforementioned manual skill areas.

See Petitioner's Appendix 8a; Report and Recommendation of United States Magistrate Judge at pages 10a to 12a.

In short, the Petitioner was dismissed by action of the Academic Performance Committee. The lower court determined that the Petitioner was accorded all, if not more than, the process due a student dismissed on academic grounds. Accordingly, the lower court found that the individually-named Respondents were entitled to qualified immunity because they acted as reasonable school officials would under the circumstances.

PETITIONER IS NOT ENTITLED TO A WRIT OF CERTIORARI

The Petitioner appears to assert that the decisions below present several questions worthy of certiorari. These questions would, however, amount to a reconsideration of the entire case *de novo* by this Court. Ultimately, his "main question" inquires whether the lower court applied the correct criteria in awarding qualified immunity. Clearly, the lower court applied the proper objective reasonableness standard. Therefore, no grounds for granting this Petition exist.

The Petitioner erroneously claims that the District Court opinion upheld by the Court of Appeals applied incorrect criteria in evaluating the qualified immunity defense. The lower courts applied the test as set forth and recognized in, for example, *Graham v. Connor*, 490 U.S. 386, 397, 109 S.Ct. 54 (1989). *See also, Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727 (1982). In other words, viewing the Respondents' actions in an objective manner, the court found that they did not violate any of the Petitioner's rights of which reasonable school officials in

their respective positions should have known. The standard the court employed was neither novel nor one of the lower court's creation. Rather the court concisely applied to the undisputed facts of the case the qualified immunity test that has long been well established.

The Petitioner argues that in applying the reasonable official test the lower court overlooked the correct test. He queries this Court for the correct test, demonstrating his complete failure to read the law on this issue.

In determining that the named defendants violated no constitutional right of the Petitioner of which a reasonable school official should have known, the lower court evaluated each constitutional claim put forth by the Petitioner. In each instance, the court found that no due process, free speech or equal protection violation existed as a matter of law. As the court found that the first prong of the qualified immunity test was not met, no further evaluation was necessary. Therefore, Petitioner's claim that improper criteria were evaluated in this analysis is patently flawed.

Moreover, the Applicant's petition does not raise any issues of exceptional or national significance. The Court of Appeals opinion, as well as that of the District Court, represents a straightforward application of the qualified immunity test applied by *Graham v. Connor* and its progeny to the facts of this case. Those facts involve one student who has been unable to accept the administratively sound decision to dismiss him from dental school due to his academic deficiencies. This case raises no novel or exceptional issues. Nor will the impact of the decision below break any new ground.

CONCLUSION

Applicant's petition for writ of certiorari is without any basis and should be denied.

Respectfully submitted,

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Dated: January 2, 1996